



IDEM
Office of Air Management
Rules Guidance

March 1998

Development of Amendments to Rules Concerning Transportation Conformity for Nonattainment and Maintenance Areas

FACT SHEET

Overview

Section 176(c) of the Clean Air Act as amended in 1990 requires that transportation projects in nonattainment counties do not worsen existing air quality or produce any new violations. Before initiating a transportation project, local, state, and federal transportation planning officials are required to demonstrate that a project will not exceed the established emissions budget. This rulemaking streamlines duplicative requirements and provides flexibility in how conformity is demonstrated.

This rulemaking amends 326 IAC 19-2, Transportation Conformity to Federal and State Implementation Plans. The amendment is an incorporation by reference of the federal amendment, "Transportation Conformity Rule Amendments: Flexibility and Streamlining".

Citations Affected

Amends: 326 IAC 19-2.

Affected Counties

Nonattainment and maintenance areas for National Ambient Air Quality Standards (NAAQS) for transportation-related pollutants, including volatile organic compounds, oxides of nitrogen, carbon monoxide, and particulate matter, are the following counties:

Clark	Elkhart
Floyd	Lake
Marion	Porter
St. Joseph	Vanderburgh

Potential Cost

The potential cost is low. This rulemaking is an incorporation of federal requirements.

Description

This rulemaking amends 326 IAC 19-2, Transportation Conformity to Federal and State Implementation Plans, by incorporating by reference the new federal amendment at 62 FR 43780, August 15, 1997. The federal action amended the transportation conformity rule, "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act" 58 FR 62188, November 24, 1993.

The first set of amendments:

60 FR 40098, August 7, 1995

- aligned the timing of sanctions under the Clean Air Act for failure to submit a required state implementation plan (SIP) with sanctions under the conformity rule.

The second set of amendments:

60 FR 57179, November 14, 1995

- aligned the date of conformity lapses with the date of application of Clean Air Act highway sanctions for any failure to submit or submission of an incomplete control strategy SIP

- extended the grace period before which areas must determine conformity to a submitted control strategy SIP
- established a grace period before which transportation plan and program conformity must be determined in newly designated nonattainment areas,
- and corrected the nitrogen oxides (NO_x) provisions of the transportation conformity rule to be consistent with the NO_x requirements of the Clean Air Act and previous commitments made by U.S. EPA.

The third set of amendments, to be incorporated by reference in this rulemaking:

62 FR 43780, August 15, 1997

- either repeals or reflects the changes made to the original rule by the first and second set of amendments.

Since 1993, the transportation conformity rule has been included in 40 CFR 51 and largely duplicated in 40 CFR 93. The only section of today's conformity rule that remains in 40 CFR 51 is Section 51.930, which requires a conformity SIP revision. Part 51 is entitled, "Requirements for Preparation, Adoption, and Submittal of Implementation Plans." The remainder of the conformity rule is included in 40 CFR 93, which is entitled, "Determining Conformity of Federal Actions to State or Federal Implementation Plans".

Removing the first and second set of amendments incorporated in the original promulgation of 326 IAC 19-2 and amending the standing rule by incorporating by reference the third set of amendments with the exception of Section 93.102(d) of 40 CFR 93, Subpart A will most clearly represent the federal requirements.

Section 93.102(d) of the federal transportation conformity regulations allowed a 12-month grace period during which transportation activities in newly designated nonattainment areas are exempt from transportation conformity requirements. On November 4, 1997, the Washington D.C. Circuit Court held that this provision "is contrary to the plain meaning of the Clean Air Act". The U.S. EPA will delete this section in a forthcoming rulemaking.

In summary, the state rulemaking adopts 40 CFR 51, Subpart T and 40 CFR 93, Subpart A, as amended in 1997, with the exception of Section 93.102(d) of 40 CFR 93, Subpart A.

**CONSIDERATION OF FACTORS OUTLINED IN INDIANA CODE
13-14-8-4**

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account:

- 1) all existing physical conditions and the character of the area affected;
- 2) past, present, and probable future uses of the area, including the character of the uses of surrounding areas;
- 3) zoning classifications;
- 4) the nature of the existing air quality or existing water quality as the case may be;
- 5) technical feasibility, including the quality conditions that could be reasonably be achieved through coordinated control of all factors affecting the quality; and
- 6) economic reasonableness of measuring or reducing any particular type of pollution.

Consistency with Federal Requirements

The amended rules are consistent with federal requirements.

IDEM Contact

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